

CHAPTER 4. MARKETING U.S. PRODUCTS AND SERVICES

DISTRIBUTION AND SALES CHANNELS

Distribution and sales channels of industrial goods in Thailand are normally comprised of two channels: 1) from U.S. exporter to Thai importer, to Thai end-user; and 2) from U.S. exporter to Thai end-user. The selection of distribution and sales channels depends largely on the type of product and the end-user. Products that require after sales service should have a Thai importer representing them locally. Generally, the end-user's confidence will increase if there is a place where he/she can go and get assistance every time the machine breaks down. The end-user normally feels more comfortable dealing with an agent or distributor since there are no language or distance barriers. The end-user can expect an immediate response to inquiries. The agent or distributor also facilitates customs procedures for end-users. It should be noted that, in general, only local agents, distributors, or manufacturer's branch offices in Thailand are eligible to enter bidding for government tenders.

In the past, large-scale end-users tended to source their needs directly from exporters or manufacturers abroad, especially on turnkey projects. This trend has diminished since the financial crisis of 1997-98.

For consumer goods, there are generally three distribution and sales channels: 1) from U.S. exporter, to Thai importer, to Thai retailer, to Thai end-user; 2) from U.S. exporter, to Thai importer, to Thai wholesaler, retailer, and end-user; 3) from U.S. exporter, to Thai retailer, to end-user. Perishable consumer goods tend to go through the first channel, which is the fastest. In this channel importers tend to act as wholesalers at the same time. Non-perishable consumer goods normally go through the second or third channel. The second channel seems to be the most favored, especially with lower-priced items, since there are over 250,000 mostly small retail outlets in Thailand. Working through wholesalers will promote better market coverage.

INFORMATION ON TYPICAL PRODUCT PRICING STRUCTURES

The market in Thailand is open and very competitive. Thai customers agree that price is a significant factor in selecting which products to purchase, especially since 1997-98. Detailed market analysis is recommended for developing a pricing strategy in the Thai market (the Commercial Service offers such analysis under our Flexible Market Research program—see www.csbangkok.or.th for more information). U.S. firms need to study such factors as the channels of distribution, necessary sales and promotional techniques and the current pricing practices of key competitors. Standard credit payments, as in most international trade, apply in Thailand as well.

Importers of large equipment or machinery charge a commission of 5-10 percent and allow their customers to open L/Cs themselves. Manufacturers or wholesalers normally receive a 5-10 percent profit margin. Retailers and distributors of local products receive a 30-40 percent margin.

Thai consumers are very price conscious. In fact, less than half of Thai consumers report buying based on brand-name recognition and first time buyers often buy on price alone. Consumers are often offered free gifts or extra options with their purchases. In addition, midnight sales or occasional sales have proven to be quite successful. Retailers charge their customers very low margins depending on the product and the frequency of turnover. In general, the margin structure is as follows:

Convenience Stores	10-12%
Discount Stores	8-10%
Department Stores	40%
Manufacturers or Wholesalers	5-10%
Distributors of Local Products	10-15%
Direct sale of specialty products	60-80%
Direct sale of general product	40% max.
Importers of large equipment or machinery	5-10%
Importers of luxury products	60% min.

USE OF AGENTS AND DISTRIBUTORS: FINDING A PARTNER

Although Thai law does not require use of local agents and distributors, it is one of the most efficient and effective ways to enter the market in Thailand. Among many business cultures in Thailand, interpersonal relationships are a vital factor for successful business transactions. Local agents and distributors are accustomed to local business practices and requirements. They are in the market and can deliver what is required for a successful business arrangement that companies in the U.S. cannot conveniently provide from long distance. In addition, local agents and distributors will take care of regulatory affairs and acquire import permit for U.S. exporters.

U.S. exporters must invest sufficient time and attention in selecting a qualified agent and providing training for marketing and technical support staff. Frequent contact with local representatives is essential in order to build a good relationship.

The two best ways to locate an agent and/or distributor in Thailand are:

- 1) Use the International Partner Search Service (IPS), Gold Key Service (GKS), or Video Gold Key Service available from the U.S. Commercial Service, U.S. Embassy Bangkok (see our website at www.csbangkok.or.th for more information). The IPS report provides a list of Thai companies who have been hand-selected by our Trade Specialist responsible for your industry sector, and who have examined your product literature and company profile, have been interviewed by our Trade Specialist, and have expressed strong interest in holding further discussions with you about

representing your company. We provide you with a company profile and contact information for each Thai company.

Following your receipt of the IPS report and your company's initial follow-up, should you plan to visit Thailand we recommend you use our Gold Key Service, whereby we will set up meetings with each potential Thai representative, arrange hotel and transportation, and provide that the appropriate Trade Specialist from our staff accompany you to the meetings. Should you not be in a position to travel from the U.S. to Thailand but wish to have face-to-face discussions with the Thai candidates, we can arrange "virtual" meetings by videoconference under our Video Gold Key Service. If you do not have access to videoconferencing equipment, you would simply need to travel to the nearest U.S. Department of Commerce Export Assistance Center (which are located in most state capitals) for the video hookup on your end.

2) Participate in related trade exhibitions in Thailand. Trade exhibitions are a good means to test the market and locate serious agents and/or distributors in Thailand who visit the trade exhibitions to find new products and services. In Chapter 13 the U.S. Commercial Service provides a list of suggested international events organized in Thailand. Also included is a list of trade missions or U.S. Pavilions to be organized in the coming year.

FRANCHISING

The franchise market structure has not changed much since the Asian financial crisis began in mid-1997. Food franchises command approximately 45 percent of the market, following by convenience stores with approximately 35 percent. The remainder is comprised of service franchises such as laundry, language and computer schools. Franchises from the United States still lead the market with approximately an 80 percent share. Local franchises have approximately a 15 percent market share. Local investors are very receptive to franchises from the United States because of their quality, brand name recognition, standards and innovation. They are also well known for the large capital investment required. There is a 25 percent drop out rate for local franchise operations due to their poor standards and low quality.

Local franchises have better growth potential than international franchises under tight economic conditions for several reasons. Investing in a local franchise requires a comparatively smaller franchise fee and profit sharing component. In addition, the devaluation of the Baht currency increases the non-Baht denominated franchise fee payments. Thus, the franchisees' costs rise significantly.

The already tight competitive market, due to the economic downturn, limits the opportunity for franchise operators to pass on this burden to the customers through price increases. Those already in the market, particularly those in fast food and consumer goods, are experiencing diminished revenues because the Thai people are being more cautious and selective in their spending. It is probably more difficult to start new international franchises in Thailand now but U.S. franchises are advised to keep a close

eye on market developments and learn who might be the most promising potential partners. This is because franchising will be seen as an attractive, relatively safe way to get back into business for many Thai investors and the best prospects should be in the following industries hotel management, automotive after market, and e-commerce related industries such as delivery services, computer services, and so forth.

RETAIL DISTRIBUTION IN THAILAND

Thailand's retail hypermarket is dominated by non-US industry leaders, including Tesco Lotus Super Stores, Carrefour, Siam Makro and Big C Super Centres. Department stores are of Thai or Japanese origin. The only visible American entities are 7 Eleven franchises (Convenience) and Office Depot (Cash and Carry). That said, U.S. products are very well received and widely promoted in nearly all types of retail outlets listed herein. For example, supermarkets such as Villa and Tops run frequent US Food promotions. Provincial Thai department stores are lobbying for measures to control the expansion of the hypermarkets which are hugely successful. As a result of stiff competition, the number of "mom and pop" variety stores is declining in Thailand.

Number of Retail Outlets by Type:

	<u>1998</u>	<u>1999</u>	<u>2000</u>	<u>2001 (e)</u>
Department Stores	111	112	103	108
Hypermarket	48	46	59	79
Supermarket	124	138	150	170
Convenience Stores	2,504	4,500	5,537	5,750
Cash & Carry	18	18	19	21
Category Killer	58	150	206	239
Total	2,869	4,964	6,047	6,367

Retail Revenues by Store Type (US\$ Millions)

	<u>1998</u>	<u>1999</u>	<u>2000</u>	<u>2001 (e)</u>
Department Stores	743	456	357	340
Hypermarket	619	361	394	479
Supermarket	385	261	242	249
Convenience Stores	233	255	267	252
Cash & Carry	276	168	151	152
Category Killer	2,009	3,164	3,701	3,898
Total	4,265	4,665	5,112	5,370

Notes: The above statistics are unofficial estimates, (e) represents estimate, US \$1 = 45 Baht. Source: Siam Makro

Leading retail stores in Thailand by category:

1. Department Stores: Central Department Stores, Robinson, Imperial Department Stores, The Mall Department Stores, Isetan, Tokyu, Tang Hua Seng
2. Hypermarkets: Big C Super Centre, Lotus Super Stores, Carrefour, Auchan
3. Supermarkets: Tops, Foodland, Villa Market, Sunny's Super Market, Food Lion Supermarket, Jusco Super Market
4. Convenience stores: 7-Elevens, Am/Pm, Homemart, Family Mart, Lemon Green, Select, Tiger Mart, Star Mart, Jeffy
5. Cash & Carry: Siam Makro
6. Category Killer: Super Sports, Power Buy, Office Macro Center, Office Depot, Boots, Watson's, MAX Auto Express, Marks & Spencer, etc.

DIRECT MARKETING

Direct marketing is considered to be an effective means of marketing in Thailand and is expected to grow steadily in the next few years. Since the onset of the Asian financial crisis in mid-1997, many of the resulting unemployed have joined the direct marketing workforce. Often, these people possess business experience and are highly motivated. Direct marketing is used widely in the sale of cosmetics, health products, cleaning and household items, and electrical appliances. Major U.S. cosmetics brands that are sold via direct marketing are Amway, Nu Skin, Herbal life, and Avon. Service businesses such as life and health insurance also often use direct marketing. Even though direct marketing has proved to be very successful in the Thai market, many problems still need to be solved such as poor product quality, loss during delivery, and imitation, to name a few. To boost consumer confidence in direct sales, Thailand's government has enacted a number of consumer protection laws.

Direct marketing and mail order sales to some extent have benefited from use of individual credit cards in Thailand. Credit cards stretch the buying power of Thai consumers and facilitate retail sales through non-traditional means such as mail order and electronic commerce. Leading the market in this sector are American Express (Amex) and CitiBank (Visa Card and Master charge card). Most major department stores in Thailand also are pursuing direct marketing via mail order campaigns through their own networks of discount cardholders. The direct selling of household consumer goods and electrical appliances using an installment plan is gaining popularity among consumers, especially in rural areas. TV home shopping was introduced and is well accepted with annual turnover of about \$4 million, but the poor quality of products has discouraged consumer confidence and actual sales totaled only \$2 million in 2000.

E-commerce is expected to become more widely used in Thailand, but is currently only a fledgling sector. At present, Thai consumers still prefer seeing a tangible good before purchasing. Globalization and the World Wide Web have also made E-commerce in Thailand more competitive. People can check product prices from everywhere in the world without adding transportation costs, fees and taxes. When local companies add

transportation costs, handling fees and taxes to their products, local consumers will become more conscious of competitive pricing.

JOINT VENTURES/LICENSING

Joint ventures (JVs) and licensing agreements are important market entry strategies for American exporters to Thailand. In many cases, the only way to overcome costly freight charges, high tariffs and competition from cheap local goods is via local production. Thai firms need to become more technologically advanced to offset competition from lower cost producers, some of whom also have devalued their currency. Thailand's Civil and Commercial Code has a section on General Contracts which broadly governs all contractual business relationships and transactions. Depending on the nature of the contract, the Public Companies Act and Alien Business Act include provisions pertaining to joint venture agreements which American firms should be aware of before signing with any local partners. Joint venture partnerships with funding support, technology transfer and training components are effective mechanisms to achieve this.

Many Thai firms are actively seeking U.S. joint venture partners who, along with much needed capital in these economic times, can also bring technical, marketing and management skills to a business relationship. In turn, Thai firms generally offer assets, valuable local vendor and government contacts, and established business relationships throughout the region. A number of aggressive U.S. companies have already entered into strategic joint-venture relationships with Thai partners in Indochina and China.

The U.S. Commercial Service at the U.S. Embassy in Bangkok can provide assistance to American firms seeking potential joint venture partners in Thailand through various marketing services.

STEPS TO ESTABLISHING AN OFFICE

The primary organizational forms for commercial enterprises are the sole proprietorship, partnership, Limited Liability Company, joint venture and foreign branch. All are similar in nature to those found in the United States. Limited liability companies, however, are more often privately held rather than public corporations. The majority of foreign corporations operating in Thailand do so through private limited liability companies.

There are 3 major forms of partnership in Thailand:

- 1) An unregistered ordinary partnership,
- 2) A registered ordinary partnership, and
- 3) A limited partnership.

As in the United States, each form of partnership has different levels of liability for partners and different tax consequences for the partners and partnership. If a firm

chooses a more formal type of organization, it may decide to form a private limited company or a public limited company. Generally speaking, the former is similar to a U.S. privately held corporation while the latter may offer shares to the public.

Thailand also offers the possibility of establishing a representative or regional office for those companies engaged in non-revenue generating activities. These may be offices engaged in market research and assessment, providing quality control or purchasing services to a head foreign office, providing warranty support services for products sold by its head office to the Thai market.

In any process of establishing an office, individuals and firms are strongly advised to consult at an early stage with legal or other professional advisors to ensure compliance with all applicable laws and regulations and to ensure selection of the optimal business structure for their activities in Thailand. Other considerations for American firms are to ensure there are no restrictions on foreign entity participation in a particular sector; whether there are import or other special licenses required and whether there are any special incentives available from Thai organizations such as the Board of Investment (BOI) and the Industrial Estate Authority (IEAT).

The U.S.-Thai Treaty of Amity and Economic Relations of 1966 allows U.S. majority-owned businesses, incorporated either in the United States or in Thailand, to operate on a nearly equal footing with Thai corporate entities. Consequently, U.S. corporations may establish wholly-owned subsidiaries or branch offices in Thailand without the constraints that other foreign firms face from the Alien Business Law. However, there are still government restrictions in the communications, transport and banking sectors, the exploitation of land and natural resources and the trade of domestic agricultural products. To register under the Treaty of Amity, a U.S. company needs to obtain documents from the U.S. Commercial Service office and to file an application with the Department of Commercial Registration at the Thai Ministry of Commerce. The U.S. Commercial Service at the U.S. Embassy in Bangkok has further information.

SELLING FACTORS/TECHNIQUES

To differentiate themselves from local and third country competitors, U.S. firms should emphasize their strengths in quality, innovation, technology enhancements and customer service. Thai customers have come to expect more and better styles and designs, regular product upgrades and updated technology from U.S. companies, and will often choose U.S. products and services on the basis of "value for money," not solely on cost factors. Important business practices for competitive advantages include good customer relationship management, strong local partners or distributors, reference of success and customers, and high service capabilities.

A competent marketing strategy is important for doing business in Thailand because the market structure is changing rapidly in several respects. Successful companies used the following techniques and strategies to maintain and expand market share in Thailand:

- Educate buyers on new and suitable technology, and provide high reliability and unbiased advice through direct sales to end-users;
- Identify beneficial points of specific solutions;
- Sell consulting together with solutions;
- Use training as an effective means to make potential customers aware of the quality of products and services;
- Create end-user awareness in order to expand services;
- Promote entity in business communities by advertising through media, participating in trade shows, and organizing seminars to launch new products.

Large U.S. firms have their own subsidiaries in Thailand to sell products and provide technical services. Opening a representative office and a company-owned support facility will also underline the company's commitment to the market. Due to the 1997-98 Asian financial crisis, most Thai buyers require longer-term or more flexible and creative financing terms. Thai distributors prefer to deal directly with U.S. vendors and not with a regional distributor. Understanding end-users' behavior and their cultural environment helps U.S. companies to offer the most suitable products to the Thai market.

Thai law permits all foreign companies, with or without a local representative, to submit bids on public sector tenders. However, most foreign firms have found it advantageous to appoint a local agent who can deal with problems related to communications, bureaucratic procedures, local business practices and marketing when competing and bidding on government projects. A consortium of U.S. companies is acceptable for the supply of a wide range of products in large tenders.

U.S. firms should be aware that while the purchasing company may simply accept the lowest bid that meets specifications, it may also attempt to bargain with one or more of the lowest bidders to negotiate better terms. Therefore, U.S. firms should be prepared to empower their agents to take measures to increase competitiveness. On major contracts, it is advisable to have an American representative for such bargaining. In addition, the public agencies may request credit in their procurement tenders. A supplier who offers credit will have a better chance of winning bids. Sales without credit are sometimes made if other factors such as price, quality, and delivery schedules are of greater importance.

The most important requirements for new U.S. suppliers are continuous upgrading and development of new products, suitable promotional activities, good service, and qualified representatives for the local market. In addition, flexible sales policies are also important to attract potential long-term users. A Thai language manual for users is also important.

ADVERTISING AND TRADE PROMOTION

Advertising and trade promotion are important marketing tools in Thailand. In particular, foodstuffs and consumer products should be promoted heavily via a full range

of mass media. In Thailand, many companies rely heavily on the two major English-language newspapers, "The Bangkok Post" and "The Nation," for advertising, but Thai-language publications should also be considered. The most popular daily newspapers in Thai are "Krung Thep Thurakit" (Bangkok Business News) and "Manager." Special promotional campaigns should be conducted at local shopping centers, hotels and convention halls. Movie theaters and cable channels are also viable means of reaching the public. It is advisable to translate all product literature and technical specifications into Thai when advertising in trade journals and organizing technical seminars. Successful firms also arrange for Thai agents and major customers to receive specialized training at the U.S. plant. Please also see Selling To The Government for more on training. Equipment is often donated to conduct training in Thailand.

Compared to the conventional advertising media, the Internet has become a far more dynamic and effective marketing tool. E-commerce has become widespread and a powerful business tool in almost every industry (both durable and non-durable goods). Electronic advertisements serve as channels to reach a broader client base, to develop stronger customer relations, to generate customer feedback, and to enhance a company's image.

Commercial promotions are an equally important marketing tool for both consumer and industrial products in Thailand. Consumer trade promotion in Thailand is frequently conducted by using gift premiums; discount coupons, or lucky draws, for items such as package tours, cars, or electrical appliances. Consumer trade promotion events are frequently held in supermarkets and shopping malls. Exhibiting firms repeatedly take part in these events, as the cost of attending is much lower than participating in a privately organized trade fair. The Department of Export Promotion in Thailand has been actively holding sectoral exhibitions to promote Thai exports and domestic consumption.

Industrial product promotion, on the other hand, varies from industry to industry. For example, in the textile machinery industry, market leaders frequently organize their own exclusive exhibitions presenting new products and technology to specific market segments. Trade fairs with a sectoral focus serve as a screening tool since exhibitors can be certain that they will have access to the appropriate group of customers. The U.S. Commercial Service in Bangkok includes a list of suggested industry events staged in Thailand as well as solo fairs, U.S. Pavilions at local events and trade missions in Chapter 13 of this Country Commercial Guide and also publishes this information on its website, www.csbangkok.or.th.

It is advisable that all product literature and technical specifications be translated into Thai. Successful U.S. firms operating in Thailand often arrange for their Thai agents and major customers to receive specialized training at their U.S. plant. It is also common practice to donate equipment for training purposes, when appropriate.

SALES SERVICE/CUSTOMER SUPPORT

Training, after sales service, reliable customer support, and the availability of spare parts are the most important factors cited by Thai customers in evaluating services related to their purchasing decisions. These factors are especially important for industrial product marketing. Buyers seek a quick turn around time on their requests for technical assistance and perceive such service as being provided by reliable suppliers. In case the local branch cannot provide the service, suppliers should be able to acquire support from overseas branches. Spare parts should also be available in a timely manner.

Better support and after-sales-service have placed U.S. suppliers in a much better position, compared with their European competitors, providing equal quality products, or Asian competitors, providing lower priced products. Thai customers have a greater confidence in U.S. suppliers' service and support, due to their well-trained service and support teams, their concisely written manuals, and their willingness to modify product offerings. Some Thai buyers would rather invest in higher-quality, more expensive products, in order to save expensive maintenance costs following warranty expirations.

Suppliers of products that have complicated technologies should obtain a highly qualified and experienced technical team and provide technical training to their customers, or set up a customer help desk. High-end Thai customers usually consider quality, service and price respectively when purchasing products. A well trained after sales service team can increase the possibility of repeat orders. In addition, Thai customers appreciate receiving periodic technical updates and information from their suppliers. Often, engineers or specialists are sent by the U.S. firm to stay for extended periods in Thailand to conduct larger scale training of big groups of employees who will operate new equipment.

It is important for U.S. suppliers with or without local representatives to appoint a qualified partner who can provide their customers with quality services in the Bangkok area and nationwide. Major suppliers noted that competitive pressures and margin squeezes have forced them to place higher priority on service and support in order to keep old customers and capture new ones. This information spreads quickly via word of mouth, and if positive, can increase the supplier's reputation and sales volume.

SELLING TO THE GOVERNMENT

Even though some government projects have been put on hold because of tighter budgets, U.S. exporters still have opportunities in such key fields as petroleum refining and petrochemicals, telecommunications, transportation, the environment, health care and commercial defense. Most companies with long-term strategic views have not significantly cut back their business development efforts.

The key to successful bidding on Thai government contracts and supply tenders is to have a reputable local representative with good access to the procuring agency and

knowledge of specific procurement requirements. Without this intermediary, it is very difficult to win a government project. Representatives are accepted as legitimate players in the bidding process. Agents often provide an early "heads up" to U.S. firms when they hear of attractive tenders. Before these tenders are even issued, they can sometimes ensure that the principal's product can meet all of the tender specifications.

It should also be noted by companies, which bid on government projects requiring training on equipment to be purchased that this is an important feature considered in the review of all proposals. Training is important but ministries' comptrollers reportedly often refuse to consider this very necessary expense when accepting bids for tenders. Accordingly, the costs are often also difficult for firms to absorb in order to win the contract. Because prices for many products can be viewed on the internet, it may be difficult to build in such expenses during the bid process. Aside from factory visits to the U.S. for a select group of company employees who may not necessarily be involved in the life of the project, U.S. firms may find it more cost-effective to send engineers or specialists in a specific industry to train bigger groups of employees at a plant or specialized government facility such as a military installation.

A specific set of rules, commonly referred to as the "Prime Minister's Procurement Regulations," governs public sector procurement. These regulations require that non-discriminatory treatment and open competition be accorded to all potential bidders. However, in reality the system is not entirely transparent, nor does the Royal Thai Government always provide a level playing field for foreign bidders. The procuring government agency reserves the right to accept or reject any or all bids at any time, and is not bound to approve the lowest bid. The procuring government agency may also modify the technical requirements during the bidding process. This flexibility can prove frustrating to bidders and charges that changes are made for special considerations have been common in the past.

Generally, the procuring government agency provides preferential treatment to domestic suppliers who receive an automatic 15 percent price advantage over foreign bidders in initial bid round evaluations. The specific laws that apply to international tenders are Regulations 87 and 89 which generally adhere to established international procedures. The "two envelope" system is commonly used, with technical evaluations of bids conducted separately from cost evaluations.

The current Thai Constitution, passed in October 1997, contains a chapter on corruption in government. The status and powers of the National Counter Corruption Commission (NCCC) have been enhanced, giving it independence from all branches of government. The members of the Commission sit on the NCCC for a term of nine years with no renewal, and report to their own chairperson. Individuals holding high political offices, and members of their immediate families, are now required to list their assets and liabilities before taking office and upon leaving office.

It appears that there is a will developing to enforce transparency in government procurements. However, because of tighter budgets in the wake of the economic crisis,

the Royal Thai Government has cancelled or deferred a number of infrastructure projects. Almost all projects that are moving ahead are ones that were committed to before the crisis, and that had long-term financing already in place.

COUNTERTRADE

Regulations promulgated in May 2000 formalized a Thai government practice requiring a counter-trade transaction on government procurement contracts valued at more than 300 million Baht, or US\$6.7 million (\$1US : 45 Baht), on a case-by-case basis. However, the provision for a case-by-case approach undermines transparency and predictability. The current procurement value compulsory for counter purchase agreements is set at 50 percent of the CIF import price. From 1994 through October 2000, 120 counter-trade agreements were carried out, resulting in the exports of 22.6 billion Baht.

A concerned government agency or state enterprise must call for a bid with a counter purchase condition announcement under a form called "Letter of Undertaking for Countertrade." The steps are as follows:

- Concerned government agency/state enterprise submits a list of selected firm (s) to the Department of Foreign Trade.
- Selected company (s) is/are notified to contact Department of Foreign Trade in order to draft the Counter Purchase Contract. The negotiation and contract signing may be done directly with the foreign company or its trading company/agent in Thailand that has power of attorney.
- Department of Foreign Trade will inform the concerned government agency/state enterprise of the signed countertrade agreement after which a principal procurement contract can then be carried out.
- The Department of Foreign Trade will oversee compliance with the agreement on the foreign company's part. Sales invoices, B/L's and Credit Notes, as evidence of Thai exports, must be submitted to the Department of Foreign Trade.

Commodities used in countertrade deals include rubber, rice, tapioca flour and certain manufactured goods. As part of a counter-trade deal, the Thai government may also specify markets into which commodities may not be sold; these are usually markets where Thai commodities already enjoy significant access.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

The Thai Government's administrative and judicial posture on intellectual property rights (IPR) improved markedly from 1998 through 2000. Enforcement also improved, with a sustained program of raids on pirate optical media producers. This has not stemmed the rising tide of piracy, however, and further improvements in on-the-street enforcement are needed. Trademark piracy is a burgeoning problem, and exports of pirated materials are growing. The Thai government clearly recognizes the importance of addressing and dealing with the problem of intellectual property right infringements

and with continued pressure from their major trading partners, has set this issue as a priority.

Obstacles to effective IPR enforcement are numerous. Resource limitations, especially in the wake of the financial crisis, hamstringing police capabilities and judicial administration alike. Although conviction rates are very high, corruption and a cultural climate of leniency can complicate some phases of case administration. Irregularities in police and public prosecutor procedures occasionally have resulted in the substitution of insignificant defendants for major ones and the disappearance of vital evidence. The frequency of raids compromised by leaks from police sources has declined, but remains a concern. Pirates, including those associated with transnational crime syndicates, have responded to stepped-up levels of enforcement with intimidation against rights-holders' representatives.

A specialized intellectual property court established in 1997 has improved judicial procedures and imposed higher fines. Criminal cases generally are disposed of within six to twelve months from the time of a raid to the rendering of a conviction. In many cases, penalties imposed offer insufficient deterrence, according to rights-holders. However, courts are imposing tougher sentences, and a growing number of people are serving time in jail. Defendants sometimes disappear while on bail, and sentences sometimes are reduced or overturned on appeal. Authorities lack sufficient resources to undertake enforcement actions apart from those initiated by rights-holders. Effective prosecutions can be labor-intensive for rights-holders, who often investigate, participate in raids, help coordinate the warehousing of confiscated property, and assist in the preparation of documentation for prosecution.

The Thai Government's trademark application procedure was streamlined in 1998. Defending trademarks in Thailand is often a time consuming and expensive legal process, but the legal process in place and operates with integrity.

Amendments to the Thai Patent Law came into force during 1999, and the community of rights holders generally is satisfied with the new provisions, although patent applications can take up to five years to be processed in some sectors, such as pharmaceuticals. As of June 2000, a trade secrets law was under consideration in the Thai parliament.

NEED FOR A LOCAL ATTORNEY

It is highly recommended that U.S. firms obtain relevant legal advice from a local attorney who can provide guidance on drafting and enforcing commercial agreements, company registration, and applying for requisite permits. The services of a local attorney are required for executing distributorship agreements, setting up offices in Thailand, registering patents and trademarks, and for taking legal measures to protect a product from intellectual property right infringement.

As literature on commercial law in Thailand (in English) is scarce, it is recommended that a firm wishing to do business in Thailand gather information on regulations and legal processes prior to arriving in Thailand. This will also ensure that the firm is aware of practices and benefits that it is entitled to, granted by the Board of Investment (BOI) and the Industrial Estate Authority of Thailand (IEAT).

The U.S. Commercial Service at the American Embassy in Bangkok can provide a list of Thai lawyers and American legal consultants who specialize in Thai commercial law and service international clients. The list can also be downloaded from the Commercial Service Bangkok website at www.csbangkok.or.th.

PERFORMING DUE DILIGENCE/CHECKING BONA FIDES OF BANKS/AGENTS/CUSTOMERS

The 1997-98 Asian financial crisis had its start in Thailand in part because of excesses in the financial sector that were not discovered or checked because of legal, regulatory, institutional and information deficiencies, and a weak supervisory system. The problem started, to a large extent, because of excessive risk taking in the private sector.

U.S. buyers/investors considering any deals in Thailand should be cautious, and exercise extreme due diligence, as a number of local companies still lack transparency in their account books. Commercial Service Bangkok offers our International Company Profile service for a reasonable fee, that provides basic information on Thai firms such as date founded, number of employees, officers, bank references, product lines, and foreign business contacts. More information on this service is available on our website at www.csbangkok.or.th. For more in-depth information, U.S. buyers/investors are advised to hire professional accountancy companies, lawyers, asset appraisers/valuers, and other experts in due diligence work to check bona fides of the bank or company they want to buy, extend credit to, or with whom they want to form joint partnership or any form of licensing agreement. A number of leading American accounting and consulting companies with expertise in due diligence are active in Thailand.

U.S. firms may also need to check with the government authorities who have information on firms listed in the Stock Exchange of Thailand (SET) for their listing status. Organizations worth checking for this type of information are the Stock Exchange of Thailand, and the Securities and Exchange Commission (SEC). Each has their own data bank with mandatory collected information that all listed firms need to report on a quarterly and/or annual basis. For information related to companies under financial distress or under rehabilitation, the CDRAC (Corporate Debt Restructuring Advisory Committee), an organization set up by the Bank of Thailand, can be contacted to find out which companies are involved in on-going debt restructuring/rehabilitation or litigation.